HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 498 of 2005 (SS)

Palto Ram ..... Petitioner

Versus

1. Union of India.
2. Director National Institute of Hydrology
   Roorkee
3. Senior Administrative Officer
   National Institute of Hydrology .....Respondents

Sri Navneet Kaushik, Advocate for the petitioner
Sri V.B.S. Negi, Additional Solicitor General for the respondents.

Dated: 4th May 2005

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 21.3.2005 passed by the respondent No. 2, annexure-1 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that petitioner is employed as a Staff Car Driver in the establishment of the respondents. The respondent No. 2 vide order dated 21.3.2005 transferred the petitioner to Gowhati from Roorkee on the pretext of promotion from Staff Care Driver (Grade I) to Staff Car Driver (Special Grade). The petitioner alleged that the respondent no. 2 had grudge against him because the respondents reduced the salary of his son Subhash Chand to 3/4th and it was ordered that Subhash Chand

would not be entitled for any increment for four years. Subhash Chand preferred a writ petition No. 1612 of 2004 in the High Court and High Court stayed the recovery from Subhash Chand vide order dated 24.12.2004.

The petitioner has also submitted that on 9.11.1992 an agreement was entered between the Staff Association of the National Institute of Hydrology and between the Administrative Officer that no person will be sent to a Regional Centre from the National Institute of Hydrology Roorkee and if any appointment has to be made at the Regional Centre then the same would be done by appointing the persons from fresh advertisements and not from the members of the National Institute of Hydrology.

The petitioner has also submitted that he made a representation on 5.4.2005 before the respondents but the same has not been decided as yet. So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India.

It has been held by the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532 as under:*

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post

has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conductive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

It is well settled that the transfer is an exigency of service. However option for the petitioners to approach the higher authorities is available and the petitioner is at liberty to approach the higher authority.

An Apex Court in the case State Bank of India vs. Anjan Sanyal and others (2001) 5 SCC 508. It has held as under:

"An order of transfer of an employee is a part of the service conditions an such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the

order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

As stated above the petitioner has already made a representation to the respondents against his transfer order dated 21.3.2005. The petitioner has also submitted that he has forgone his promotion also. The respondents are, therefore, directed to consider the representation of the petitioner and to pass appropriate orders in the light of the observations made above within a month after receipt of certified copy of this order. The transfer order shall remain in abeyance for a period of six weeks only.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

Rajesh Tandon J.

4.5.2005
*Dhyani